IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.33/2000

S T A T E
(through Public Prosecutor) ..... Appellant.

V/s

1. Shri Prabhakar Nadkarni.
2. Shri Manoj Prabhar Nadkarni,
Both residing at
Walawaikar Chawl, Ward No.12,
Khorlim, Mapusa, Goa. ..... Respondents.

Mr. S.N. Sardessai, Public Prosecutor for the State/ appellant.

Mr. A.D. Bhobe, Advocate for the respondents/Accused.

CORAM : P.V. HARDAS, J.

DATE : MARCH 13, 2003.

ORAL JUDGMENT :

The State being aggrieved by the Judgment dated 5.1.2000, passed by the Judicial Magistrate, First Class, Pernem, in Criminal Case No.49/S/98, acquitting the respondents/accused for the offences punishable under Sections 448, 427, 352 and 506(ii) of the Indian Penal Code, has filed the present appeal.

2. The facts, necessary for the decision of the present appeal, are set out hereunder :

The complainant PW.6 Maria Mascarenhas lodged a complaint on 30/6/1998 for the aforesaid offences. The

said complaint was recorded by PW.8 A.S.I. Babu Gaonkar. PW.8 then proceeded to the scene of offence and recorded the scene of offence panchanama at Exhibit PW.1/A in the presence of PW.1 Antonio Fernandes. After recording the statements of other witnesses, a charge-sheet for the aforesaid offences came to be filed against the present respondents/accused. The respondents/accused, in their statements under Section 313 of the Code of Criminal Procedure as well as the suggestions which have been put to the prosecution witnesses, suggest their defence that the house belonged to them and they had demolished the house. They have negatived the contention of PW.6 Maria Mascarenhas that she had been residing in the aforesaid house.

3. The learned trial Court, by the aforesaid Judgment, acquitted the respondents/accused of the aforesaid offences. The reasons stated by the learned trial Court are :

(i) the Complainant PW.6 Maria Mascarenhas had not been able to establish that she had been residing in the said house, as she has admitted that her husband resides at Nerul.

(ii) PW.6 Maria's version that she had cooking utensils in the said house had been falsified in view of

the contents of the scene of offence panchanama at Exhibit PW.1/A. The police did not notice any cooking utensils in the debris.

4. The learned trial Court found that PW.6 Maria Mascarenhas had been able to produce only one tax receipt for the period 1998-99. The learned trial Court found that the evidence of the defence witness DW.1 Pramod Naik clearly demonstrates that PW.6 Maria had approached the Panchayat and she was allowed to pay the tax without any notice to the respondents/accused. On the aforesaid grounds, the learned trial Court has acquitted the respondents/accused of the aforesaid offences.

5. I have heard Mr. S.N. Sardessai, learned Public Prosecutor appearing on behalf of the State. I have also perused the depositions and the Judgment of the learned trial Court. From the evidence, it appears that PW.6 Maria Mascarenhas has not been able to establish that she was residing in the house belonging to the respondent/accused. Her contention is that her father had expired 50 years back and her mother had expired 27 years ago and she had been residing in the said house as mundkar. According to me, PW.6 Maria Mascarenhas has miserably failed in proving that she had been residing in the aforesaid house. The only evidence

on record is in the form of payment of house tax and that too for only one year. The respondents/accused have been able to establish the circumstances under which PW.6 had paid the tax. It appears that PW.6 Maria Mascarenhas had paid the tax without any notice being given by the Panchayat to the respondents/accused. The accused, in the cross examination of PW.2 Satish Shetgaonkar, have produced 24 xerox receipts showing payment of house tax by them. The other circumstances on the record, clearly negative the contention of PW.6 Maria Mascarenhas that she was residing in the said house.

6. This is an appeal against acquittal. The view taken by the learned trial Court is a possible view on the facts of the case. No perversity has been pointed out before me and, therefore, I am not inclined to interfere with the order of acquittal. Criminal Appeal No.33/2000 is dismissed.

P.V. HARDAS, J.

ssm.